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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,950	01/07/2002	Claudio Torghele	946999.00002-4	5275

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/040,950

Applicant(s)

TORGHELE ET AL.

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-82 is/are pending in the application.
- 4a) Of the above claim(s) 58-81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-20, 37, 38, 53, 54 and 82 is/are rejected.
- 7) ☒ Claim(s) 21-36, 39-52 and 55-57 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/294,702.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-57 and 82 in the response of December 3, 2003 is acknowledged. The traversal is on the ground(s) that there would be no extra burden. This is not found persuasive because the apparatus claims of group I are proper for class 99, while the method claims of group II are proper for class 426. It should be noted that applicant did not dispute the basis for restriction listed by the examiner: that the apparatus of group I can be used to practice another and materially different process.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 58-81 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the response of December 3, 2003.

Priority

3. This application filed under former 37 CFR 1.62 lacks the necessary reference to the prior application. The current status of the parent nonprovisional application(s) should be included. Specifically, application 09/832,409 is now Pat. No. 6,546,847.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4-19 and 37-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 4 and 37 recite "it". It is not clear what "it" is.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 3, 20, 53, and 82 are rejected under 35 U.S.C. 102(e) as being anticipated by Olander Jr et al [Pat. No. 5,997,924].

Olander Jr et al teach a pizza device comprising a dough mixer including means for charging a mixing region with flour-like or dust-like ingredients, means for homogenizing and aerating the ingredients, means for introducing liquids, means for preparing the dough, and means for discharging the dough from the mixing region; a shaping device, a metering and dispensing device, an oven, a transport system (column 4, line 10 to column 5, line 10), and a means for receiving a programmed order for a pizza (column 2, line 59 to column 3, line 50). Regarding claim 53, the "performing" of heating cycles

Art Unit: 1761

are merely a preferred method of using the claimed apparatus. A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647. MPEP 2114.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olander Jr et al as applied above, in view of Marchignoni [Pat. No. 3,735,692].

Olander Jr et al teach the above mentioned components as well as a conveying system (column 4, lines 12 & 50), and cutting device (column 5, line 5). Olander Jr et al do not recite a lower press plate. Marchignoni teaches a pizza system comprising a lower press plate (Figure 1, #32a). It would have been obvious to one of ordinary skill in the art to incorporate the lower press plate of Marchignoni into the invention of Olander Jr et al since both are directed to pizza machines, since Olander Jr et al already included a transport system (column 4, lines 12 & 50), and since the lower press plate of Marchignoni provided a convenient means for pressing the dough into shape as well as conveying it through the next stations (Figure 1, #32a).

Allowable Subject Matter

11. Claims 21-36, 39-52, and 55-57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 4-19 and 37-38 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: the multiple station apparatus for automated preparation of pizza of dependent clam 4 defines over the prior art of record since the prior art does not teach, suggest, nor render obvious a dough mixer comprising a closed housing with two circular and separated surfaces between which two casing surfaces extend which run in an arc along the same casing line and have upper and lower flat surfaces formed by a sliding blade, and kneading element;

the multiple station apparatus for automated preparation of pizza of dependent clam 21 and 35-36 define over the prior art of record since the prior art does not teach, suggest, nor render obvious means for receiving a dough ball and presses the ball into a disc, means for pressing the disc into a pizza base, and means for dimpling the pizza base;

the multiple station apparatus for automated preparation of pizza of dependent clam 37 defines over the prior art of record since the prior art does not teach, suggest,

nor render obvious the metering and dispensing device includes a dispensing feed tube which applies toppings in a spiral pattern by rotating and shifting radially over the pizza base;

the multiple station apparatus for automated preparation of pizza of dependent claim 39 defines over the prior art of record since the prior art does not teach, suggest, nor render obvious a metering and dispensing device including a base plate with a central hole and an axis, a bushing centered on the axis, a spindle connected to the bushing, a carriage connected to the spindle, a tube for feeding the components, wherein rotation causes components to be dispensed in a spiral;

the multiple station apparatus for automated preparation of pizza of dependent claim 46 defines over the prior art of record since the prior art does not teach, suggest, nor render obvious means for positioning the pizza for garnishing, means for rotating a dispenser perpendicular to the pizza, means for moving the dispenser radially relative to the perpendicular axis and parallel relative to the pizza, means for dispensing the components whereby they are placed in a spiral;

the multiple station apparatus for automated preparation of pizza of dependent claim 47 defines over the prior art of record since the prior art does not teach, suggest, nor render obvious sources of infrared rays in the far-, visible-, and near-infrared ranges located in the upper portion of the oven, sources of far-infrared rays located in the lower portion of the oven, the rays acting through a plate with openings which supports the pizza, and reflectors;

Art Unit: 1761


the multiple station apparatus for automated preparation of pizza of dependent claim 55 defines over the prior art of record since the prior art does not teach, suggest, nor render obvious a pizza cutting and transfer device including a plate, a blade, and a vertical sheet, wherein the plate moves vertically to cut the pizza with the blade, then horizontally allowing the blade and sheet to transfer the pizza.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Scannell [Pat. No. 6,327,968], Meibach [Pat. No. 6,156,364], Acknin et al [Pat. No. 5,967,023], and Pilati et al [Pat. No. 6,546,847] teach pizza machines.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.


Drew E Becker
Primary Examiner
Art Unit 1761

2-6-04